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EXTRAORDINARY

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GOVERNMENT OF INDIA

MINISTRY OF LAW

New Delhi, the 18th October 1949

ORDINANCE No. XXVII of 1949.

AN

ORDINANCE

to provide for the administration of evacuee property and for certain matters connected therewith.

WHEREAS an emergency has arisen which makes it necessary to provide for the administration of evacuee property and for certain matters connected therewith;

Now, THEREFORE, in exercise of the powers conferred by section 42 of the Government of India Act, 1935 (26 Geo. 5, c. 2), the Governor-General is pleased to make and promulgate the following Ordinance:—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(1) This Ordinance may be called the Administration of Evacuee Property Ordinance, 1949

(2) It extends to all the Provinces of India (except Assam and West Bengal), and also to every Acceding State to the extent to which the Dominion Legislature has power to make laws for that State with respect to the matters dealt with in this Ordinance.

(3) It shall come into force at once.

2. Definitions.—In this Ordinance, unless there is anything repugnant in the subject or context,—

(a) "allotment" means the grant by the Custodian, or any other person duly authorised by the Custodian in this behalf, of a temporary right of use and occupation of any immovable property of an evacuee to any person otherwise than by way of lease;

(b) "Custodian-General" means the Custodian-General of Evacuee Property in India appointed by the Central Government under section 5;

(c) "Custodian" means the Custodian for the Province, and includes any Additional, Deputy or Assistant Custodian of evacuee property appointed for that Province;

(d) "evacuee" means any person,—

(i) who, on account of the setting up of the Dominions of India and Pakistan or on account of civil disturbances or the fear of such disturbances, leaves or has, on or after the 1st day of March, 1947, left, any place in a Province for any place outside the territories now forming part of India, or

(ii) who is resident in any place now forming part of Pakistan and who for that reason is unable to occupy, supervise or manage in person his property in any part of the territories to which this Ordinance extends, or whose property in any part of the said territories has ceased to be occupied, supervised or managed by any person or is being occupied, supervised or managed by an unauthorised person, or

(iii) who has, after the 14th day of August, 1947, acquired by way of allotment or by means of unlawful occupation or other illegal means any right to, interest in or benefit from any property which is treated as evacuee or abandoned property under any law for the time being in force in Pakistan;

(e) "intending evacuee" means any person who, after the 14th day of August, 1947,—

(i) has transferred to Pakistan his assets or any part thereof situated in any part of the territories to which this Ordinance extends:

Provided that the transfer to Pakistan of any reasonable sum of money, for the purpose of financing any transaction in the ordinary course of his trade or for the maintenance of any member of the family of such person shall not be deemed to be a transfer of assets within the meaning of this sub-clause, or

(ii) has acquired, if the acquisition has been made in person, in any mode other than any of the modes specified in sub-clause (iii) of clause (d) of section 2, or, if the acquisition has been made by or through a member of his family, in any mode whatsoever, any right to, interest in or benefit from any property which is treated as evacuee or abandoned property under any law for the time being in force in Pakistan, or

(iii) has, by the execution of any document of transfer in writing, whether registered or not, or by means of any other document in writing, sought to effect an exchange of the whole or any part of his property situated in any part of the territories to which this Ordinance extends, with any property situated in Pakistan;

(f) "evacuee property" means any property in which an evacuee has any right or interest (whether personally or as a trustee or as a beneficiary or in any other capacity), and includes any property—

(1) which has been obtained by any person from an evacuee after the 14th day of August, 1947, by any mode of transfer, unless such transfer has been confirmed by the Custodian, or

(2) belonging to any person who, after the commencement of this Ordinance, does any of the acts specified in clause (e) of section 2, or in which any such person has any right or interest, to the extent of such right or interest,

but does not include—

(i) any ornament and any wearing apparel, cooking vessels or other household effects in the immediate possession of an evacuee;

(ii) any property belonging to a joint stock company, the registered office of which was situated before the 15th day of

August, 1947, in any place now forming part of Pakistan and continues to be so situated after the said date;

(g) "member of the family" means any member of the family of an intending evacuee who is wholly dependent upon the earnings of such evacuee for the provision of the ordinary necessities of life or who shares with such evacuee in the ordinary expenses of the household to which they jointly belong or who owns property or carries on business jointly with such evacuee;

(h) "prescribed" means prescribed by rules made under this Ordinance;

(i) "property" means property of any kind, and includes any right or interest in such property, but does not include a mere right to sue or a cash deposit in a bank;

(j) "unauthorised person" means any person (whether duly empowered in this behalf by the evacuee or otherwise) who, after the 14th day of August, 1947, has been occupying, supervising or managing the property of an evacuee without the approval of the Custodian.

3. Rule of construction in applying Ordinance to Acceding States.—In the application of this Ordinance to any Acceding State, unless there is anything repugnant in the subject or context,—

(a) references to the Provinces shall be construed as references to that Acceding State;

(b) references to any Provincial Government shall be construed as references to the Government of that Acceding State;

(c) references to the official Gazette shall be construed as references to the official Gazette or other similar official publication of that Acceding State; and

(d) references to any enactment in force in the Provinces of India but not in force in that Acceding State shall be construed as references to the corresponding law in force in that State.

4. Ordinance to override other laws.—The provisions of this Ordinance and of the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any such law.

CHAPTER II

EVACUEE PROPERTY AND VESTING THEREOF IN THE CUSTODIAN

5. Appointment of Custodian-General.—The Central Government may, by notification in the official Gazette, appoint a person to be the Custodian-General of Evacuee Property in India for the purpose of discharging the duties imposed on the Custodian-General by or under this Ordinance.

6. Appointment of Custodians, etc.—(1) The Provincial Government may, by notification in the official Gazette, appoint for the Province a Custodian, and as many Additional, Deputy or Assistant Custodians, of evacuee property as may be necessary for the purpose of discharging the duties imposed on the Custodian by or under this Ordinance.

(2) Subject to the provisions of this Ordinance, all Custodians, Additional, Deputy or Assistant Custodians of evacuee property shall discharge the duties imposed on them by or under this Ordinance under the general superintendence and control of the Custodian-General.

(3) Subject to the provisions of sub-section (2), Additional, Deputy and Assistant Custodians shall discharge the duties imposed on them by or under this Ordinance under the general superintendence and control of the Custodian for the Province, but the Provincial Government may, by general or special order, provide for the distribution of work among them.

7. Notification of evacuee property.—(1) Where the Custodian is of opinion that any property is evacuee property within the meaning of this Ordinance, he may, after causing notice thereof to be given in such manner as may be prescribed to the persons interested, and after holding such inquiry into the matter as the circumstances of the case permit, pass an order declaring any such property to be evacuee property.

(2) Pending the determination of the question whether any property is evacuee property or otherwise, any property in respect of which a notice has been issued under sub-section (1) shall, from the date of the notice be deemed to have been attached by the Custodian, and any transfer or delivery of such property or of any right or interest therein and any payment to any person contrary to such attachment shall be void against all claims enforceable under the attachment.

(3) The Custodian shall, from time to time, notify, either by publication in the official Gazette or in such other manner as may be prescribed, all properties declared by him to be evacuee properties under sub-section (1).

8. Vesting of evacuee property in the Custodian.—(1) Any property declared to be evacuee property under section 7 shall vest in the Custodian.

(2) Where immediately before the commencement of this Ordinance any evacuee property in a Province had vested in any person exercising the powers of a Custodian under any law repealed hereby, the evacuee property shall, on the commencement of this Ordinance, be deemed to have vested in the Custodian appointed or deemed to have been appointed for the Province under this Ordinance, and shall continue to so vest.

(3) Where any property in a Province belonging to a joint stock company had vested in any person exercising the powers of a Custodian under any law repealed hereby, then nothing contained in clause (f) of section 2 shall affect the operation of sub-section (2), but the Provincial Government may, by notification in the official Gazette, direct that the Custodian shall be divested of any such property in such manner and after such period as may be specified in the notification.

(4) Where after the vesting of any evacuee property in the Custodian any person is in possession of any such property, he shall be deemed to be holding it on behalf of the Custodian and shall on demand surrender possession of it to the Custodian or to any other person duly authorised by him in this behalf.

9. Power of Custodian to take possession of evacuee property vested in him.—If any person in possession of any evacuee property refuses or fails on demand to surrender possession thereof to the Custodian or to any person duly authorised by him in this behalf, the Custodian may use or cause to be used such force as may be necessary for taking possession of such property and may, for this purpose, after giving reasonable warning and facility to any woman not appearing in public to withdraw, remove or break open any lock, bolt or any door or do any other act necessary for the said purpose.

10. Powers and duties of the Custodian generally.—(1) Subject to the provisions of any rules that may be made in this behalf, the Custodian may take such measures as he considers necessary or expedient for the purposes of securing, administering, preserving and managing any evacuee property which has vested in him and may, for any such purpose as aforesaid, do all acts and incur all expenses necessary or incidental thereto.

(2) Without prejudice to the generality of the provisions contained in sub-section (1), the Custodian may, for any of the purposes aforesaid,—

(a) carry on the business of the evacuee;

(b) appoint a manager for the property of the evacuee or for carrying on any business or undertaking of the evacuee and authorise the manager to exercise any of the powers of the Custodian under this section;

(c) enter, or authorise any other person to enter, any land or premises to inspect any evacuee property;

(d) take all such measures as may be necessary to keep any evacuee property in good repair;

(e) complete any building which has vested in him and which requires to be completed;

(f) require any person, notwithstanding anything to the contrary contained in any other law for the time being in force relating to the disclosure of any information by a public servant or any other person, to furnish such returns, accounts or other information in relation to any property and to produce such documents in his possession as the Custodian considers necessary for the discharge of his duties under this Ordinance;

(g) require any banking company to furnish such information as the Custodian may require with respect to any remittance made by any person to any place outside India after the 14th day of August, 1947;

(h) search, or authorise any other person to search, any building or place in which the Custodian has reason to believe that any evacuee property or any document tending to show that any person is an evacuee or that any property is evacuee property is being kept or concealed and take possession thereof;

(i) take such action as may be necessary for the recovery of any debt due to the evacuee;

(j) institute, defend or continue any legal proceeding in any civil or revenue Court on behalf of the evacuee or refer any dispute between the evacuee and any other person to arbitration or compromise any claims, debts or liabilities on behalf of the evacuee;

(k) raise on the security of the evacuee property such loans as may be necessary;

(l) in any case where the evacuee property which has vested in the Custodian consists of a share or shares in a company, exercise, notwithstanding anything to the contrary contained in the Indian Companies Act, 1913 (VII of 1913) or in the articles of association of the company, the same rights in the matter of making a requisition for the convening of a meeting or of presenting a petition to the Court under the provisions of the Indian Companies Act, 1913, or the articles of association of the company or in any other matter as the evacuee shareholder himself could have done had he been present, although the name of the Custodian does not appear in the register of members of the company;

(m) incur any expenditure, including the payment of taxes, duties, cesses and rates to Government or to any local authority or of any amounts due to any employee of the evacuee or of any debt due by the evacuee to any person;

(n) pay to the evacuee, or to any member of his family or to any other person as in the opinion of the Custodian is entitled thereto, any sums of money out of the funds in his possession;

(o) transfer in any manner whatsoever any evacuee property, notwithstanding anything to the contrary contained in any law or agreement relating thereto;

Provided that the Custodian shall not sell any immovable property or any business or other undertaking of the evacuee, except with the previous approval of the Custodian-General;

(p) invest any money held by him in any of the securities approved by the Central Government or in the prescribed manner;

(q) delegate, by general or special order, all or any of his functions under this Ordinance to such officers or persons as he thinks fit;

Provided that the Custodian shall not delegate any of his functions under clause (g) or clause (h) to any officer or person below the rank of a Deputy Custodian.

11. Special provisions with respect to certain trust properties.—(1) Where any evacuee property which has vested in the Custodian is property in trust for a public purpose of a religious or charitable nature, the property shall remain vested in the Custodian only until such time as fresh trustees are appointed in the manner provided by law, and pending the appointment of fresh trustees the trust property and the income thereof shall be applied by the Custodian for fulfilling, as far as possible, the purpose of the trust

(2) In respect of any *Wakf-alal-aulad*,—

(a) where the mutawalli is an evacuee, the property forming the subject matter of the *wakf* shall vest in the Custodian subject to the rights of the beneficiaries under the *wakf*, if any, who are not evacuees,

(b) where not all the beneficiaries are evacuees, the rights and interests of such of the beneficiaries as are evacuees shall alone vest in the Custodian.

12. Power to vary or cancel leases or allotments of evacuee property.—(1) Notwithstanding anything contained in any other law for the time being in force, the Custodian may cancel any allotment or terminate any lease or amend the terms of any lease or agreement under which any evacuee property is held or occupied by any person, whether such allotment, lease or agreement was granted or entered into before or after the commencement of this Ordinance.

(2) Where by reason of any action taken under sub-section (1), any person has ceased to be entitled to possession of any evacuee property, he shall on demand by the Custodian surrender possession of such property to the Custodian or to any person duly authorised by him in this behalf.

(3) If any person fails to surrender possession on demand under sub-section (2), the Custodian may, notwithstanding anything to the contrary contained in any other law for the time being in force, eject such person and take possession of such property in the manner provided in section 9.

13. Payments to Custodian to be valid discharge.—(1) Any amount due to any evacuee in respect of any property which is vested in the Custodian or in respect of any transaction entered into by the evacuee, shall be paid to the Custodian by the person liable to pay the same.

(2) Any payment made otherwise than in accordance with sub-section (1) shall not be deemed to discharge the person paying it from his obligation to pay the amount due, and shall not affect the right of the Custodian to enforce such obligation against any such person

14. Recouping of expenditure by Custodian.—Any expenditure incurred by the Custodian in the exercise of any power conferred by or under this Ordinance shall, in relation to any evacuee property in respect of which it has been incurred, be a charge on such property and shall, subject to the provisions of section 48, have priority over all other charges on the property, and such expenditure may be met or recouped by the Custodian out of the income accruing from such property or the sale proceeds thereof.

15. Maintenance of accounts by Custodian.—(1) The Custodian shall maintain a separate account of the property of each evacuee possession whereof has been taken by him, and shall cause to be made therein entries of all receipts and expenditure in respect thereof.

(2) The accounts shall be maintained in such form and in such manner as may be prescribed.

(3) The Provincial Government shall cause the accounts maintained under this section to be inspected and audited at such intervals and by such persons as may be prescribed.

16. Restoration of property.—(1) The Custodian may, on application made to him in this behalf in writing by an evacuee or any person claiming to be the heir of an evacuee, restore, subject to such terms and conditions as he may think fit to impose, the evacuee property to which the evacuee or other person would have been entitled if this Ordinance were not in force:

Provided that the applicant produces in support of his application a certificate from the Central Government, or from any person authorised by it in this behalf, to the effect that the evacuee property may be so restored if the applicant is otherwise entitled thereto.

(2) On receipt of an application under sub-section (1), the Custodian shall cause public notice thereof to be given in the prescribed manner and, after holding a summary inquiry into the claim in such manner as may be prescribed, may—

(a) make a formal order declaring that the property shall be restored to the applicant; or

(b) reject the application; or

(c) refer the applicant to a civil Court for the determination of his claim and title to the property:

Provided that no order for restoration shall be made under this section, unless provision has been made in the prescribed manner for the recovery of any amount due to the Custodian in respect of the property or the management thereof.

(3) Upon the restoration of the property to the evacuee or to the heir, as the case may be, the Custodian shall stand absolved of all responsibilities in respect of the property so restored, but such restoration shall not prejudice the rights, if any, in respect of the property which any other person may be entitled to enforce against the person to whom the property has been so restored:

Provided that every lease granted in respect of the property by or on behalf of the Custodian shall have effect against the person to whom restoration is made until such lease is determined by lapse of time or by operation of law.

(4) The Custodian shall, on demand, furnish to the evacuee or to the heir, as the case may be, a statement containing an abstract of the account of the income received and expenditure incurred in respect of the property.

CHAPTER III

CERTAIN CONSEQUENCES OF PROPERTY VESTING IN CUSTODIAN

17. Exemption from attachment, sale, etc.—(1) Save as otherwise expressly provided in this Ordinance, no property which has vested in the Custodian shall be liable to attachment, distress or sale in execution of an order of a Court or of any other authority, and no injunction in respect of any such property shall be granted by any Court or other authority.

(2) Save as otherwise expressly provided in this Ordinance, any attachment or injunction subsisting on the commencement of this Ordinance in respect of any evacuee property which has vested in the Custodian shall cease to have effect on such commencement, and any transfer of evacuee property under orders of a Court or any other authority made after the 14th day of August, 1947, shall be set aside, if an application is made to such Court or authority by or at the instance of the Custodian within three months from the commencement of this Ordinance.

18. Occupancy or tenancy right not to be extinguished.—Nothing contained in any other law for the time being in force shall be deemed to extinguish the right of occupancy in any land of an evacuee which has vested in the Custodian and, notwithstanding anything contained in any such law, neither the evacuee nor the Custodian, whether as an occupancy tenant or as a tenant for a fixed term of any land, shall be liable to be ejected or deemed to have become so liable on any ground whatsoever for any default of the Custodian

CHAPTER IV

PROPERTY OF INTENDING EVACUEES

19. Declaration of person as intending evacuee.—(1) Where the Custodian has reason to believe that a person is an intending evacuee, he may, by notice served in the prescribed manner, call upon such person to show cause why he should not be declared an intending evacuee, and shall, after holding such inquiry into the matter as the circumstances thereof permit, and after taking such evidence as may be produced by or on behalf of the person showing cause, pass an order (stating the reasons therefor) either declaring such person to be an intending evacuee or closing the case.

(2) Any declaration made under sub-section (1) shall be published in the official Gazette.

(3) The Custodian may, pending determination of the question whether any person is an intending evacuee or otherwise, attach in the prescribed manner any property in the Province in which such person has a right or interest, and where any such attachment has been made, any transfer or delivery of the property attached or of any right or interest therein and any payment to any person of any debt contrary to such attachment shall be void as against all claims enforceable under the attachment.

20. Consequences of declaration that a person is an intending evacuee.—No person, in respect of whom a declaration has been made under section 19 that he is an intending evacuee, shall transfer in any manner whatsoever any immovable property, in which he has any right or interest, situated in any part of the territories to which this Ordinance extends, except with the previous approval of the Custodian, and any transfer made in contravention of the provisions of this section shall be void and of no effect

21. Powers of Custodian generally in respect of property of intending evacuees.—For the purposes of preserving any property in which any person in respect of whom a declaration has been made under section 19 that he is an intending evacuee has any right or interest, the Custodian may,—

(a) by order in writing, require any such person to furnish such returns, accounts or other information in relation to any such property and to produce such documents in his possession as the Custodian may require;

(b) inspect the books of account or other documents maintained by or in the possession of such person;

(c) pass such orders or direct such action to be taken in relation to any such property;

(d) by order in writing, prohibit the transfer to Pakistan of any sum of money belonging to any such person or permit such transfer subject to such conditions and restrictions as the Custodian may think fit to impose.

22. Effect of intending evacuee contravening any provision of this Chapter.—If any person, in respect of whom a declaration has been made under section 19 that he is an intending evacuee, makes any transfer of any property in contravention of section 20 or fails to comply with any order made under clause (c) or clause (d) of section 21, the Custodian may, by notification in the official Gazette, declare any property situated in the Province in which any such

person has any right or interest to be evacuee property, and on the issue of such notification any property specified in the notification shall be deemed to be evacuee property which has vested in the Custodian within the meaning of this Ordinance

23. Intending evacuee acquiring evacuee or abandoned property in Pakistan for inadequate consideration to make good the deficiency.—(1) Where any person in respect of whom a declaration has been made under section 10 that he is an intending evacuee has either personally or through any member of his family acquired, whether before or after the commencement of this Ordinance, any right to, interest in, or benefit from any property which is treated as evacuee or abandoned property under any law for the time being in force in Pakistan for a consideration which, in the opinion of the Custodian is neither reasonable nor adequate, the Custodian may, after notice to such person and after affording him a reasonable opportunity of being heard and after holding such inquiry as the circumstances of the case permit, determine, by order in writing, the amount, if any, by which the consideration, in his opinion, falls short of the real value of the property so acquired, and require such person to pay the amount to the Custodian within such time as may be specified in the order.

(2) If the amount is not paid within the time specified, or within such further time as the Custodian may allow, the Custodian may take possession of so much of the property of such intending evacuee as would be sufficient to cover the amount, in the case of movable property, or as would afford a reasonable security for the recovery of the amount, in the case of immovable property.

(3) The Custodian may, for the purpose of realising any amount payable by such intending evacuee under the provisions of this section, transfer in any manner whatsoever any immovable property which has been taken possession of by him under sub-section (2).

CHAPTER V

APPEALS, REVIEW AND REVISION

24. Appeals from orders under sections 7, 16, 19, and 38.—(1) Any person aggrieved by an order made under section 7, section 16, section 19 or section 38 may prefer an appeal in such manner and within such time as may be prescribed,—

(a) to the Custodian, where the original order has been passed by a Deputy or Assistant Custodian;

(b) to the Custodian-General, where the original order has been passed by the Custodian, an Additional Custodian or an Authorised Deputy Custodian;

Provided that where the appeal is preferred on the ground that the person aggrieved is not an evacuee within the meaning of sub-clause (iii) of clause (d) of section 2, or that the property is not evacuee property within the meaning of sub-clause (2) of clause (f) of section 2, the appeal shall be preferred in the manner prescribed in section 25

(2) The Custodian to whom an appeal is preferred under clause (a) of sub-section (1) may dispose of it himself or may make it over for disposal to an Additional Custodian or to a Deputy Custodian authorised by the Custodian in writing in this behalf (in this Chapter referred to as the Authorised Deputy Custodian).

Provided that no appeal from an order of a Deputy Custodian shall be made over for disposal to the Authorised Deputy Custodian

25. Appeals from other orders.—(1) Any person aggrieved by an order,—

(a) under section 7 notifying his property as evacuee property on the ground that he is an evacuee within the meaning of sub-clause (iii) of

clause (d) of section 2, or that the property is evacuee property within the meaning of sub-clause (2) of clause (f) of section 2, or

(b) under section 22 declaring any property of an intending evacuee to be evacuee property,

may prefer an appeal, in such manner and within such time as may be prescribed, to the District Judge designated in this behalf by the Provincial Government.

(2) For the purpose of hearing any appeal under sub-section (1) the Provincial Government shall designate one or more District Judges and define the local limits of their jurisdiction.

26. Powers of review or revision of Custodian, etc.—(1) The Custodian, Additional Custodian or Authorised Deputy Custodian may at any time, either on his own motion or on application made to him in this behalf, call for the record of any proceeding under this Ordinance which is pending before, or has been disposed of by, an officer subordinate to him for the purpose of satisfying himself as to the legality or propriety of any orders passed in the said proceeding, and may pass such order in relation thereto as he thinks fit:

Provided that the Custodian, Additional Custodian or Authorised Deputy Custodian shall not pass an order under this sub-section revising or modifying any order prejudicial to any person without giving such person a reasonable opportunity of being heard.

Provided further that if one of the officers aforesaid takes action under this sub-section, it shall not be competent for any other officer to do so

(2) The Custodian, Additional Custodian or Authorised Deputy Custodian (but not a Deputy or an Assistant Custodian) may, after giving notice to the parties concerned, review his own order.

27. Powers of revision of Custodian-General.—(1) The Custodian-General may at any time, either on his own motion or on application made to him in this behalf, call for the record of any proceeding in which any District Judge or Custodian has passed an order in appeal under the provisions of this Chapter for the purpose of satisfying himself as to the legality or propriety of any such order and may pass such order in relation thereto as he thinks fit:

Provided that the Custodian-General shall not pass an order under this sub-section prejudicial to any person without giving him a reasonable opportunity of being heard.

(2) Notwithstanding anything contained in sub-section (1), where in respect of any proceeding called for under sub-section (1), the Custodian-General is of opinion that the District Judge is in error in holding any person not to be an evacuee or any property not to be evacuee property, he shall not pass any order in relation thereto but shall refer the matter, with his own opinion thereon, to the High Court to which the District Judge is otherwise subordinate.

(3) Any reference made under sub-section (2) shall be heard by a Bench of the High Court consisting of not less than two Judges and the Custodian-General shall dispose of the proceeding in accordance with the decision of the High Court.

28. Finality of orders under this Chapter.—Save as otherwise expressly provided in this Chapter, every order made by the Custodian-General, District Judge, Custodian, Additional Custodian, Authorised Deputy Custodian, Deputy Custodian or Assistant Custodian shall be final and shall not be called in question in any Court by way of appeal or revision or in any original suit, application or execution proceeding.

CHAPTER VI

PENALTIES AND PROCEDURE

29. Penalty for failure to surrender possession of evacuee property.—Any person who fails to comply with a notice or demand by or on behalf of the Custodian under the provisions of this Ordinance to surrender possession of any evacuee property shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

30. Penalty for concealing evacuee property.—Any person who wilfully conceals any property which he knows or has reason to believe to be evacuee property shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

31. Penalty for causing damage to evacuee property.—Any person who wilfully destroys or causes damage to any evacuee property or unlawfully converts it to his own use shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

32. Penalty for false declaration in certain cases.—Any person who—

(i) for the purpose of obtaining an allotment or lease of any evacuee property, makes a declaration or statement which is false or which he either knows or has reason to believe to be false, or does not believe to be true, or

(ii) furnishes any return, account of information which is material to any of the purposes of this Ordinance and which is false or which he either knows or has reason to believe to be false or does not believe to be true,

shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

33. Penalty for offences not expressly provided for.—Whoever contravenes any provision of this Ordinance or of any rule or order made thereunder, or obstructs the lawful exercise of any power conferred by or under this Ordinance shall, if no express provision is made by this Ordinance for the punishment of such contravention or obstruction, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

34. Penalty for abetment.—Whoever abets any of the offences punishable under this Ordinance shall be punishable with the punishment provided for the offence.

35. Offences to be cognizable.—Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), all offences under this Ordinance shall be cognizable

36. Procedure for prosecution.—No prosecution for any offence punishable under this Ordinance shall be instituted except with the previous sanction of the Provincial Government or of any officer authorised in this behalf, by general or special order, by the Provincial Government.

37. Offences may be tried summarily.—Any Magistrate empowered to try in a summary way the offences specified in sub-section (1) of section 260 of the Code of Criminal Procedure, 1898 (Act V of 1898), may, if an application is made in this behalf by the complainant and the Magistrate thinks fit, try any offence under this Ordinance in accordance with the provisions contained in sections 262 to 265 of that Code, but nothing contained in sub-section (2) of section 262 of that Code shall apply to any such trial.

CHAPTER VII

MISCELLANEOUS

38. Restriction on transfer by evacuees.—(1) No transfer of any right or interest in any property made in any manner whatsoever after the 14th day of August, 1947, by or on behalf of an evacuee or by or on behalf of a person who has become an evacuee after the date of the transfer, shall be effective so as to confer any rights or remedies on the parties to such transfer or on any person claiming under them unless it is confirmed by the Custodian.

(2) An application for confirmation of such transfer may be made by the transferor or the transferee or any person claiming under, or lawfully authorised by, either of them to the Custodian within two months from the commencement of this Ordinance.

(3) The provisions of section 5 of the Indian Limitation Act, 1908 (IX of 1908) shall apply to an application under sub-section (2).

(4) The Custodian shall hold an inquiry into the application in the prescribed manner and may reject the application, if he is of opinion that—

(a) the transaction has not been entered into in good faith or for valuable consideration, or

(b) the transaction is prohibited under any law for the time being in force, or

(c) the transaction ought not to be confirmed for any other reason.

(5) If the application is not rejected under sub-section (4), the Custodian may confirm the transfer either unconditionally or subject to such terms and conditions as he thinks fit to impose.

39. Prohibition of registration of documents in certain cases.—(1) Where any document required to be registered under the Indian Registration Act, 1908 (XVI of 1908), purports to transfer any right or interest in any property in contravention of the provisions contained in section 20 or section 38, no registering officer shall register any such document and no revenue officer shall sanction any mutation of names in respect thereof, unless the party presenting the document for registration produces a certificate from the Custodian declaring that the property is not property belonging to an intending evacuee or that it is not evacuee property or that the transaction has been confirmed or that the Custodian has given his previous approval to the transfer.

(2) Save as otherwise expressly provided herein, nothing contained in sub-section (1) shall be deemed to affect the provisions contained in the Payment of Taxes (Transfer of Property) Act, 1949 (XXII of 1949), or in any other law for the time being in force relating to the registration of documents.

40. Custodian's right to take possession not affected by death of evacuee, etc.—Where in pursuance of the provisions of this Ordinance, the Custodian has taken possession of any evacuee property, such possession shall not be deemed to be wrongful, nor shall anything done in consequence thereof be deemed to be invalid or affected by reason only that at the material time the evacuee who had a right or interest in the property had died or had ceased to be an evacuee.

41. Certain officers to be public servants.—The Custodian-General, the Custodian and every other person duly appointed to discharge any duties imposed on them by this Ordinance or the rules or orders made thereunder shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (Act XLV of 1860).

42. Powers of the Custodian while holding inquiry.—For the purposes of holding any inquiry under this Ordinance, the Custodian shall have the same powers as are vested in a civil Court under the Code of Civil Procedure, 1908 (Act V of 1908), when trying a suit, in respect of the following matters, namely:—

- (a) enforcing the attendance of any person and examining him on oath;
- (b) compelling the discovery and production of documents;
- (c) any prescribed matter;

and the inquiry by the Custodian shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (Act XLV of 1860), and the Custodian shall be deemed to be a Court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898 (Act V of 1898).

43. Jurisdiction of civil Courts barred in certain matters.—(1) Save as otherwise expressly provided in this Ordinance, no civil Court shall have jurisdiction—

- (a) to entertain or adjudicate upon any question whether any property is or is not evacuee property or whether an evacuee has or has not any right or interest in any evacuee property; or
- (b) to entertain or adjudicate upon any question whether any person is or is not an intending evacuee; or
- (c) to question the legality of any action taken by the Custodian-General or the Custodian under this Ordinance; or
- (d) in respect of any matter which the Custodian-General or the Custodian is empowered by or under this Ordinance to determine.

44. Protection of action taken in good faith.—(1) No suit, prosecution or other legal proceeding shall lie against the Custodian-General or the Custodian or any person acting under the direction of the Custodian in respect of anything which is in good faith done or intended to be done in pursuance of this Ordinance or of any rules or orders made thereunder.

(2) No suit or other legal proceeding shall lie against the Central Government, the Provincial Government, the Custodian-General or the Custodian or any other person in respect of any damage caused or likely to be caused by anything in good faith done or intended to be done in pursuance of this Ordinance or of any rules or orders made thereunder.

45. Recovery of arrears.—Any sum due to the Provincial Government or to the Custodian under the provisions of this Ordinance may be recovered as if it were an arrear of land revenue.

46. Record to be public documents.—All records prepared or registers maintained under this Ordinance shall be deemed to be public documents within the meaning of the Indian Evidence Act, 1872 (I of 1872), and shall be presumed to be genuine until the contrary is proved.

47. Notice of suits to the Custodian.—(1) If in any suit it appears to the civil or revenue Court that a question relating to the property of an evacuee or an intending evacuee is involved, the Court shall not proceed to determine that question until after notice has been given to the Custodian.

(2) A Court may, at any stage of a suit or proceeding, either on its own motion or on application made in this behalf by the Custodian, make an order that the Custodian shall be added as a party to the suit or proceeding, if the Court is satisfied that such addition is necessary or proper for the satisfactory determination of the suit or proceeding.

48. Fees payable to the Custodian.—(1) The Provincial Government may fix the fees payable to the Custodian for the management or disposal of any property vested in him.

(2) Such fees shall be payable out of the income or sale proceeds of such property and shall be a first charge on the property.

49. Power to exempt.—The Central Government may, by notification in the official Gazette, exempt any person or class of persons or any property or class of property from the operation of all or any of the provisions of this Ordinance.

50. Power to give directions.—The Central Government may give directions to any Provincial Government as to the carrying into execution in the Province of any of the provisions contained in this Ordinance or of any rules or orders made thereunder.

51. Power of Central Government to take action with regard to evacuee property.—The Central Government may, for the purpose of regulating the administration of any property which has vested in the Custodian under the provisions of this Ordinance, pass such order or direct such action to be taken in relation thereto as, in its opinion, the circumstances of the case require and as is not inconsistent with any of the provisions contained in this Ordinance.

52. Delegation of powers.—(1) The Central Government may direct that any power exercisable by it under this Ordinance shall be exercisable also by such officer or authority subordinate to the Central Government or by the Provincial Government or by such other authority subordinate to the Provincial Government as may be specified in the direction.

(2) The Provincial Government may, by general or special order, direct that any power exercisable by it under this Ordinance shall, in such circumstances and under such conditions, if any, as may be specified in the order, be exercised by an officer subordinate to the Provincial Government.

(3) Subject to the provisions of this Ordinance and the rules and orders made thereunder, the Custodian may delegate all or any of his powers under this Ordinance to any Additional, Deputy or Assistant Custodian, subject to such conditions, if any, as may be specified by the Custodian.

53. Power to make rules.—(1) The Central Government may, by notification in the official Gazette, make rules to carry out the purposes of this Ordinance

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the terms and conditions of service of the Custodian-General and other officers appointed by him in the discharge of his duties;

(b) the manner in which inquiries under this Ordinance may be held.

(c) the manner in which evacuee properties which have vested in the Custodian may be notified;

(d) the manner in which possession of any evacuee property may be taken by the Custodian;

(e) the manner in which claims under any attachment made by the Custodian may be enforced by him;

(f) the manner in which trust properties which have vested in the Custodian may be administered or otherwise dealt with;

(g) the circumstances in which and the conditions subject to which the Custodian may sell any immovable property vested in him, and the procedure governing the grant of leases and the period for which leases may be granted;

(h) the circumstances in which leases and allotments may be cancelled or terminated or the terms of any lease or agreement varied;

(i) the securities in which the Custodian may invest any moneys held by him,

(j) the manner in which any moneys due to the Custodian may be recovered;

(k) the form and manner in which books of accounts and other records shall be maintained by the Custodian;

(l) the form in which any notice under this Ordinance may be issued, the manner of its service and publication and the form in which any demand may be made by the Custodian;

(m) the nature of cases and the circumstances in which and the conditions subject to which certificates for restoration of property under section 16 may be issued;

(n) the nature of cases and the circumstances in which the Custodian may refer an applicant under section 16 to a civil Court;

(o) the powers vested in a civil Court which may be exercised by the Custodian while holding any inquiry under this Ordinance;

(p) the nature of cases and the circumstances in which the Custodian may confirm or refuse to confirm a transfer under section 88;

(q) the form and manner in which and the time within which appeals and applications for revision may be preferred under Chapter V and the fees payable in respect thereof;

(r) any other matter which has to be or may be prescribed under this Ordinance.

(3) The Provincial Government may, by notification in the official Gazette, make rules providing for all or any of the following matters, namely:—

(a) the terms and conditions of service of the Custodian and other officers appointed under this Ordinance and for the furnishing of security by them;

(b) the work to be performed by the Custodian and the Additional, Deputy and Assistant Custodians;

(c) the delegation of powers of the Custodian to the Additional, Deputy or Assistant Custodian;

(d) the fees payable to the Custodian for the management and disposal of any property vested in him and the manner in which such fees shall be paid;

(e) the persons by whom and the times at which books of account maintained under this Ordinance may be inspected and audited.

54. Temporary amendment of section 54 of the Indian Income Tax Act, 1922.—

During the continuance of this Ordinance, sub-section (3) of section 54 of the Indian Income-tax Act, 1922 (XI of 1922) shall have effect as if after clause (o) thereof, the following clause had been inserted, namely:—

“(p) of any such particulars to the Custodian of Evacuee Property appointed under the Administration of Evacuee Property Ordinance, 1949, for the purpose of enabling him to discharge the duties imposed upon him by or under the said Ordinance”.

55. Repeals and saving.—(1) The Administration of Evacuee Property Ordinance, 1949 (XII of 1949), as in force in the Chief Commissioners' Provinces and the Province of Madras and the United Provinces, is hereby repealed.

(2) If, immediately before the commencement of this Ordinance, there is in force in any Province other than any of the Provinces specified in sub-section (1) or in any Acceding State any law corresponding to the Administration of Evacuee Property Ordinance, 1949, that law also shall stand repealed.

(3) Notwithstanding the repeal by this Ordinance of the Administration of Evacuee Property Ordinance, 1949, or of any corresponding law, anything done or any action taken in the exercise of any power conferred by that Ordinance or law shall be deemed to have been done or taken in the exercise of the powers conferred by this Ordinance, and any penalty incurred or proceeding commenced under that Ordinance or law shall be deemed to be a penalty incurred or proceeding commenced under this Ordinance as if this Ordinance were in force on the day on which such thing was done, action taken, penalty incurred or proceeding commenced.

C. RAJAGOPALACHARI,

Governor-General.

K. Y. BHANDARKAR,

Joint Secy. to the Govt. of India.